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Attorney for Trustee

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON**

In re

John S. Sarver
Sharon L. Sarver,

Debtors.

Ronald R. Sticka, Trustee, Estate of
John S. Sarver and Sharon L. Sarver,

Plaintiff,

vs.

Kerry D. Kelley, Bert L. Kelley, Curtis R.
Kelley, Jack Gale Kelley, Alan L. Kelley,
and Polk County, Oregon.

Defendants.

Case No.11-63250-fra7

Adv. Proc. No.

**COMPLAINT TO SELL REAL
PROPERTY FREE AND CLEAR OF
LIENS AND FOR DECLARATORY
RELIEF**

(11 U.S.C. §§ 363(f) and (h) and § 105)

Plaintiff, Ronald R. Sticka, the duly appointed trustee in bankruptcy in this bankruptcy case, alleges as follows:

I. JURISDICTION AND PARTIES

1.

Debtors, John S. Sarver and Sharon L. Sarver, filed a voluntary petition in bankruptcy under Chapter 7 on June 29, 2011. Ronald R. Sticka is the duly appointed Chapter 7 trustee and has so served since the inception of this case.

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2.

Kerry D. Kelley, Bert L. Kelley, Curtis R. Kelley, Jack Gale Kelley and Alan L. Kelley are siblings of Sharon L. Sarver, debtor, and joint heirs and devisees for real property located at 12785 Clow Corner Road, Dallas, Polk County, Oregon, and are tenants in common for that property.

3.

Polk County, Oregon, is the tax authority for real property for this property.

4.

This action is brought under the provisions of 11 U.S.C. §§ 363(f) and (h) and § 105 to compel and authorize the sale of land free and clear of the claims and interests of Defendants and to declare the shares and entitlements for each. This is a core proceeding under 28 U.S.C. §157(b)(2)(A), (K), (N) and (O). This Court has jurisdiction under 28 U.S.C. §1334.

II. CLAIM FOR RELIEF

Declaration of Estate Property and Authorization for Sale Free and Clear of Liens and Interests
(11 U.S.C. §§ 105 and 363(f) and (h))

5.

As of case commencement, debtor was entitled to a portion to the estate of her father, Sidney Ivan Kelley, deceased, together with her siblings, the Defendants in this case.

6.

As a result of the administration of her father's estate, Debtor and Defendants became tenants in common for the property located at 12785 Clow Corner Road, Dallas, Oregon, further described as:

Beginning at an iron pipe on the North line of County Road No. 852, 1644.92 feet North zero degrees 14' 10" West and 1843.88 feet North 68 degrees 48' 30" West from the Southeast corner of the David Grant Donation Land acclaim No. 43 in Township 8 South, Range 5 West of the Willamette Meridian in Polk County, Oregon; and running thence North 1 degree 00' East 310.60 feet to an iron pipe; thence North 85 degrees 16' West 184.69 feet; thence South 1 degree 00' West 254.85 feet; thence South 68 degrees 48' 30" East 196.37 feet to the place of beginning. EXCEPTING that portion of the above described property lying within the existing County Road right of way.

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1 8.

2 Except for unpaid real property taxes, this real property is free and clear of other liens,
3 and the Court should so declare. The statutory provisions of 11 U.S.C. 363(f) and (h), including
4 applicable subsections, are met such that the relief sought in this complaint may be allowed. The
5 property is not subject to partition.

6 9.

7 Plaintiff seeks authority to sell this property free and clear of liens under 11 U.S.C. §
8 363(f) and (h), and that undisputed liens, if any, and real property taxes will be paid at closing, in
9 addition to sales costs and the realtor's commission.

10 10.

11 The balance which remains for the estate and the Defendants in this case shall be divided
12 and disbursed pursuant to further order of the Court.

13 11.

14 Plaintiff shall have exclusive control and authority for the purpose of listing and
15 marketing the subject property.

16 WHEREFORE, the court should enter judgment as follows:

- 17 1. Declaring ownership by the estate and placing under the control of Plaintiff the
18 real property described in paragraph 6.
- 19 2. Order the sale of such property described herein free and clear of all liens and
20 claims of interest under 11 U.S.C. § 363(f) and (h), except to the extent paid at
21 closing, and that they otherwise attach to the proceeds of sale for disbursement in
22 equal shares to Plaintiff and the Defendants.

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3. Ordering costs in favor of Plaintiff.

4. Granting Plaintiff such other relief as is just and equitable.

DATED this 16th day of June, 2014.

RONALD R. STICKA, P.C.

By: /s/ Ronald R. Sticka
Ronald R. Sticka, OSB #722530
Attorney for Trustee